

NTSB Order No. EA-4962

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 25th day of March, 2002

Respondent .

OPINION AND ORDER

¹An excerpt from the hearing transcript containing the initial decision is attached.

falsification of an aircraft logbook, in violation of section 43.12(a)(1) of the Federal Aviation Regulations ("FAR", 14 C.F.R. Part 43),² and related conduct demonstrated that he lacked qualification to hold any airman certificate and that he did not possess, as required by FAR section 61.153(c), the good moral character required of the holder of an airline transport pilot certificate.³ We will deny the appeal.

The Administrator's July 5, 2001 Emergency Order of Revocation alleges, among other things, the following facts and circumstances concerning the respondent:

1. You are now, and at all times mentioned herein were, the holder of Airline Transport Pilot [ATP] Certificate 1459079, Mechanic Certificate No. 1332748, with airframe and powerplant ratings, Inspection Authorization, Flight Engineer Certificate No. 1672573, and Flight Instructor Certificate No. 1459079.
2. On or about August 1, 2000, you made an entry in the aircraft logbook for a Cessna 180 aircraft, civil registration no. N3386D, stating you had accomplished an annual inspection on June 1, 2000.
3. At the time you signed said entry, you knew your entry was false in that you knew you had not performed an appropriate annual inspection on N3386D on June 1, 2000.
4. Thereafter, you attempted to extort money from the owner of N3386D by suggesting you would reveal that you had falsified your entry unless he paid you the sum of

²FAR section 43.12(a)(1) prohibits any person from making or causing to be made "any fraudulent or intentionally false entry in any record or report that is required to be made, kept, or used to show compliance with any requirement" under Part 43.

³The respondent waived the expedited processing to which he would have been entitled for an emergency appeal.

\$10,000.

The Administrator, through essentially unchallenged witness testimony and documents, established these allegations, and the respondent offered no evidence in defense of them.⁴

On appeal, respondent argues, first, that the false annual inspection entry should not be deemed sufficient to support the falsification charge because the Administrator did not prove (that is, present evidence establishing) that the annual inspection entry was one that, in the words of the falsification regulation, was "required to be made." The argument is without merit.⁵ The law judge correctly observed that he could take

⁴The attempted extortion referenced in paragraph 4 of the Emergency Order of Revocation led to respondent's arrest on criminal charges in Las Vegas, Nevada. Some background is warranted. The Cessna referenced in the revocation order was involved in a crash at a time when it was overdue for an annual inspection. Because the owner of the aircraft was concerned that this circumstance might prevent him from obtaining an insurance recovery, respondent falsified the aircraft's logbook for him. After the insurance company settled with the owner for his loss, respondent threatened to disclose the deception unless the owner paid him to keep quiet. Respondent apparently had previously performed some maintenance on the aircraft for the owner.

⁵Also without merit are respondent's arguments to the effect that the Administrator was not responsive to his discovery requests. As the law judge recognized, the Administrator cannot be expected or required to produce evidence or documents, such as the aircraft or its logbooks, which are not within her possession or control. If respondent believed those sources contained exonerating information, it was his responsibility, not the Administrator's, to pursue it. There is no indication in this record that respondent made any effort to do so. At the same time, it is worth pointing out that even if there were evidence establishing that respondent had performed an annual inspection at some date before June 1, 2000 (and there is no evidence before us that he had), it would have no relevance to the uncontested proof that respondent had not performed one on June 1. See Administrator v. Rice, 5 NTSB 2285, 2290 (1987) ("[A]n entry certifying the performance of an annual inspection is false if

notice of the legal requirements of the Federal Aviation Regulations.⁶ The Administrator did not have to enter them into evidence.⁷

Respondent next argues that FAR section 61.153(c) is unconstitutionally vague because it does not provide clear notice of the conduct that would support a finding that an airline transport pilot certificate holder lacked good moral character.⁸ The Board, of course, is not empowered to review the constitutionality of the Administrator's regulations.⁹ At the same time, we have no hesitancy in agreeing with the Administrator that the conduct for which respondent is answerable in this action would not be committed by an individual who

(..continued)

the date given is not the date on which the work was performed or completed."), *aff'd* 881 F.2d 1084 (9th Cir. 1989).

⁶We note, in this connection, that FAR section 43.11(a) unequivocally directs the making of an entry in a maintenance record whenever an inspection approving an aircraft for return to service has been performed.

⁷We believe it would have been preferable, nevertheless, for the Administrator to cite in her order the regulation that imposes the duty to record an annual inspection.

⁸The revocation of all of respondent's airman certificates is sustainable on the basis of the falsification charge alone. The conclusion that respondent lacks good moral character provides a separate, independent basis for taking away his ATP certificate, and may well have bearing on his future ability to re-acquire such certification.

⁹*See, e.g., Administrator v. Lloyd*, 1 NTSB 1826, 1828 (1972) (Board has no authority to review constitutionality of FAA regulations); and *Administrator v. Ewing*, 1 NTSB 1192, 1194 (1971) ("[I]t is well settled that the Board does not have authority to pass on the reasonableness or validity of FAA regulations, but rather is limited to reviewing the Administrator's findings of fact and actions thereunder.").

possessed the personality traits expected of an ATP certificate holder.

Although any falsification draws in question, to some indefinable or unquantifiable degree, the falsifier's trustworthiness and truthfulness, falsification cases do not invariably impugn the falsifier's overall character. This is so, we believe, because an individual's moral character generally connotes a broader set of virtues or qualities than those related more closely to personal integrity alone.¹⁰ Similarly, while a criminal offense, by its very nature, involves a departure from societal judgments about acceptable behavior, few would argue that every criminal act establishes such a lapse from the moral precepts the criminal laws embody that the perpetrator can no longer be viewed as possessing good moral character. In this case, by way of contrast, we believe either the falsification or the extortion would support a judgment that the respondent's conduct cannot be reconciled with those attributes of honorable living that underlie the regulatory standard.

Inspection Authorization (I.A.) holders are empowered by the Administrator not just to inspect the maintenance performed by other mechanics, but also to sign off on work they themselves have performed without supervision. Such authority, given the high stakes involved in ensuring that aircraft are properly maintained, represents a special delegation, in the nature of a

¹⁰Among them resides an individual's respect for others and their property and for the laws that govern his relationships with others and with institutions.

public trust, that cannot survive casual or inconstant respect for meticulous maintenance record keeping, much less outright fabrication. Respondent's intentional use of his inspection authority to facilitate the commission of a fraud, by attesting to the performance of an annual inspection he had not accomplished, establishes not simply that he can not be relied upon to properly exercise his responsibilities as an I.A. holder or mechanic, it shows his willingness to exploit his role as an inspector for an unlawful purpose.

Even if the seriousness and magnitude of respondent's falsification did not compel a judgment that he is not eligible, for want of good moral character, to retain his ATP certificate under FAR section 61.153(c), his subsequent effort, and perhaps his plan from the outset, to profit from his dishonesty by blackmailing the owner of the aircraft would erase any remaining doubt.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied; and
2. The initial decision and the order of revocation are affirmed.

BLAKEY, Chairman, CARMODY, Vice Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.